

REMARKS

Claims 90-93 and 95-114 are currently pending, with claims 90, 93, 107, and 112 being independent. Claims 90 and 93 have been amended and new claims 101-114 have been added.¹

The Examiner has rejected claims 90-93 and 95-100 over Kirwin in combination with Swanson, relying on Kirwin for teaching a method of tissue shrinkage. For the reasons set forth below, applicants respectfully request withdrawal of these rejections.

Kirwin states (at p. 494, paragraph 3) that its “shrinkage method as its name implies, withdraws fluid and coagulates albumin, so that the treated tissues are reduced in volume and changed in consistency.” Kirwin is particularly focused on a method for reducing the size of a “greatly hypertrophied prostate by withdrawing fluid and coagulating albumin so that it would be possible to encompass it with instruments permitting its removal by intraurethral methods.” (Kirwin at pp. 483-484). Kirwin’s disclosure of a method of shrinkage of a hypertrophied prostate by using fluid withdrawal and albumin coagulation, does not support a finding of obviousness because the claims recite contraction of collagen in at least a portion of collagen containing tissue at the selected site to stabilize a body region containing the collagen containing tissue to approximate normal body function. Kirwin fails to disclose or suggest this feature.

Applicants further submit that the Examiner has not provided a *prima facie* case of obviousness because, at least, the Examiner has not addressed all of the recitations of independent claims 90 and 93.

Claim 90 recites “sensing an elevated composite temperature.” Further, claim 90 includes several related recitations: (1) “delivering sufficient energy . . . causes fluid medium . . . to increase in thermal energy,” (2) “moving the energy delivery device away . . . after delivering sufficient energy,” and (3) “moving the energy delivery device back . . . and sensing an elevated composite temperature due to the increased thermal energy in the fluid medium” (emphasis added). The recited “sensing” occurs at a point in time when the increased thermal energy in the fluid medium is still present from the recited delivering of sufficient energy. The Examiner’s

¹ Support for the amendments to claims 90 and 93 may be found, for example, at page 1, line 21 to page 4, line 25 and page 24, line 27 to page 25, line 6. Support for new dependent claims 101-106 may be found, for example, at page 11, lines 8-29. New claims 107-111 correspond to previously pending claims 90 and 93 with the additional “joint” recitation. Support for new claims 112-114 may be found, for example, at page 11, line 8 to page 12, line 19.

rejection fails to address, at least, this recitation of “sensing an elevated composite temperature due to the increased thermal energy in the fluid medium.” In particular, the Examiner suggests a scenario in which the device is moved away from the selected site, a determination is made as to whether or not the shrinkage was sufficient, and the “replacement would allow for further shrinkage.” [July 25, 2007 Office Action at 3.] However, the Examiner has provided no argument or contention that the recited “elevated composite temperature” would still be present so as to allow “sensing” of the elevated composite temperature after the removal, determination, and replacement. Accordingly, for at least these reasons, claim 90 and its dependent claims are patentable over Kirwin and Swanson.

Regarding claim 93, neither Kirwin nor Swanson describes or suggests that “producing a thermal feedback signal comprises sensing an elevated composite temperature due to the increased thermal energy in the fluid medium,” or that “delivering an adjusted level of energy comprises delivering a lower level of energy to reduce stray contractions caused by increased thermal energy in the fluid medium,” as claimed. Kirwin and Swanson do not address adjusting the level of energy due to an effect increased thermal energy in adjacent fluid medium has on the tissue being treated, and the Examiner has provided no argument or contention that the references provide such a disclosure or suggestion. Accordingly, applicants submit that the Examiner has not provided a *prima facie* case of obviousness.

Because new claims 101-103 and 104-106 depend on independent claims 90 and 93, respectively, Applicants respectfully assert that claims 101-106 are allowable for the same reasons. Independent claim 107 recites delivering sufficient energy with the distal portion of the energy delivery device to a joint to effect a contraction of collagen in at least a portion of collagen containing tissue at the joint, and independent claim 112 recites delivering sufficient energy with the distal portion of the energy delivery device to a selected site selected from the group consisting of tendons, ligaments, and joint capsules to effect a contraction of collagen in at least a portion of collagen containing tissue at the selected site. Neither Kirwin nor Swanson discloses or suggests these features.

Applicants do not acquiesce to the characterizations of the art. For brevity and to advance prosecution, however, Applicants may have not addressed all characterizations of the

art, but reserve the right to do so in further prosecution of this or a subsequent application. The absence of an explicit response by the applicant to any of the examiner's positions does not constitute a concession of the examiner's positions. The fact that applicant's comments have focused on particular arguments does not constitute a concession that there are not other good arguments for patentability of the claims. All of the dependent claims are patentable for at least the reasons given with respect to the claims on which they depend.

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: October 25, 2007

/Timothy W. Riffe/

Timothy W. Riffe
Reg. No. 43,881

Fish & Richardson P.C.
1425 K Street, N.W.
11th Floor
Washington, DC 20005-3500
Telephone: (202) 783-5070
Facsimile: (202) 783-2331